

Application Number: 09/591,147  
Applicant: Carol Ann Trufant  
Examiner: Dmitry Suhol  
Art Unit: 3714

### **Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a)**

#### **Facts:**

All elected claims in the above identified '147 application have been twice rejected. Applicant (at that time represented by another practitioner) filed a Notice of Appeal which was entered January 9, 2006. Subsequently, she decided to file a Continuation-in-Part of the original '147 application instead of proceeding with the appeal. Also, applicant decided to retain a different practitioner to represent her, and was without representation for a period of several months.

While without representation, applicant was told by PTO personnel that she would be able to buy a five (5) month extension to normal the two (2) month period following the filing date of her Notice of Appeal within which to either (a) file an appeal brief, or (b) file a Continuation-in-Part. Based on this advice, applicant understood that she had until August 9 at the latest to file a CIP. Applicant's affidavit reciting these facts is attached hereto.

Applicant retained me, Oleh Weres (Reg. No. 57,499) to represent her July 13, 2006 and the Power of Attorney was received and entered July 14, 2006.

Shortly thereafter, applicant received a Notice of Abandonment dated July 10, 2006.

#### **Applicable Law:**

Section § 133 of the patent statute sets a limit of six months to reply to an action of the Patent and Trademark Office:

"Upon failure of the applicant to prosecute the application within six months after any

However, a Notice of Appeal is an action by applicant, not an action by the PTO of which applicant is subsequently notified. Therefore, § 133 does not apply, and the entire 5 month period of extended time set provided in 37 C.F.R. § 136 is available upon payment of the required fee. ("The time periods set forth in §§ 191 and 192 are subject to the provisions of § 1.136 for patent applications . . ." 37 CFR 1.191(d). Also see MPEP § 1206, "TIME FOR FILING APPEAL BRIEF.")

Therefore, the Notice of Appeal was mailed prematurely, thirty (30) days before the maximum period available for applicant to proceed with the case had expired.

Relief requested:

Applicant respectfully requests that the Notice of Abandonment be withdrawn as premature.

Fee

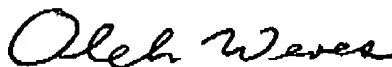
This petition does not require a fee. MPEP § 711.03(c), Part I.

Related Actions

Together with this Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a), applicant has filed a Petition for Extension of Time Under 37 CFR 1.136(a) and paid the fee required to buy a five month extension of time.

On this day, applicant has filed a Continuation-in-Part that claims benefit of the '147 application; the computer generated preliminary receipt is attached hereto.

Respectfully submitted,



Oleh Weres, Reg. No. 57,499  
Practitioner representing Applicant

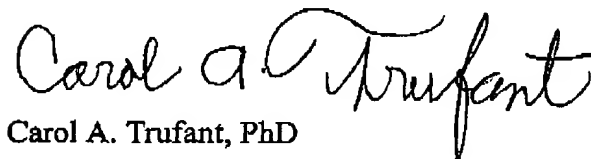
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AUG 07 2006**Applicant's Affidavit in Support of Petition to Withdraw Holding of  
Abandonment of Utility Patent Application 09/591,147**

I declare under penalty of perjury that the following is true:

On February 15, 2006, I spoke to Mr. Suhol, Patent Examiner, about the status of my appeal and specifically the timeline, and whether I could get extra time. He reported not being familiar with timelines and suggested I contact the Small Entity Assistance Center, Office of Initial Patent Examination at 571-272-4000. I believe I spoke to Rosemary or a Ms. Johnson, who then referred me to the Patent Legal Administration office at 571-272-7701. It was suggested I ask for Eugena Jones. However, Terri answered the phone. I believe Ms. Jones was not available. Terri said that in the Manual of Patent Examining Procedure there is a provision that says an applicant can purchase up to 5 months more time to file an appeal brief or a continuing application after filing a Notice of Appeal, in addition to the 2 months normally allowed.

My Notice of Appeal was filed January 9, 2006. By my calculation, January 9 + 2 months + 5 months = August 9. Therefore, I assumed that I had until August 9 to file a Continuation-in-Part to replace my original patent application instead of proceeding with the appeal.

If the Patent Office staff had told me that I had until July 9 to file an appeals brief or continuing application, I would have done so.

  
Carol A. Trufant, PhD